

mean to intimate that an executor may not, notwithstanding the Act, collect monies due the estate without an order of the Orphans Court, and that a payment would not be valid without such order. It is the duty of the executor to collect monies due the estate, &c., and the legislature did not mean to interfere with that duty. But in assigning the mortgage to Miller & Mayhew he was not collecting a debt due the testator, but disposing of it for his own private use, and if the Act condemns the sale of property by an executor, without an order of the Orphans Court, where the proceeds are applied to the purposes of the estate, for a still stronger reason would the Act condemn a transfer, when the party receiving it saw that the consideration would be misapplied. This point was not decided in the Court above, where the case was determined on the grounds, that the assignees had no notice of the release of the wife, and that all the equities of the case were open, that although, apart from the Act of 1843, an executor might sell or raise money on the property of the testator in the regular execution of his duty, and the party dealing with him was not bound to inquire into his object, yet if the latter have reasonable ground for believing that the executor *intends to misapply the 589 money, and is in the very transaction misapplying it, he can get no advantage from the transfer. And there the fact that the executor made the assignment to secure a debt, due the assignees by a firm to which he belonged, was held enough to notify them that he intended a *devastavit*, and the assignment by him as "executor and devisee" was notice to the assignees of the contents of the will. In *Mitchell v. Williamson*, 6 Md. 210, it seems, however, to be by implication asserted, that the Act extends to all sales or pledges of the property of the deceased, and even to releases of debts due the estate of the testator. And a transfer of stock is a sale or removal within the Act, *Mayor, &c., of Baltimore v. Norman*, 4 Md. 352.²⁰ But where from lapse of time it is presumed that the executor held and sold, or where, in point of fact, he did hold and sell the property as legatee, the Act does not apply, *Lark v. Linstead*, 2 Md. 420. An exception, also, is the crop on hand at the death of the decedent, which the executor may either finish or sell as he may judge convenient, but not for less than the appraised value without the approbation of the Orphans Court, sec. 279.²¹

By sec. 272 of Art. 93²² of the Code (1798, ch. 101, sub-ch. 8, sec. 3), it is provided, that in case any executor, &c., shall not have *money sufficient to discharge the just debts of and claims against the decedent*, the Orphans Court granting the letters shall, on his application made after the return of an inventory (and by sec. 273,²³ in case the Orphans Court shall

²⁰ *Stewart v. Ins. Co.*, 53 Md. 579.

²¹ Code 1911, Art. 93, sec. 289.

²² Code 1911, Art. 93, sec. 281. And until there is a complete distribution, the Orphans Court may order a sale for that purpose. *Woelfel v. Evans*, 74 Md. 349; Code 1911, Art. 93, sec. 137.

²³ Code 1911, Art. 93, sec. 282. And the Act of 1900, ch. 605, provides: "The court shall also have the power to direct a sale of any part of the (52)